

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BRANDON ALEXANDER FAVOR,

Plaintiff,

v.

BUCKLE, *et al.*,

Defendants.

Case No. 1:21-cv-01378-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR LEAVE TO PROCEED *IN FORMA*
PAUPERIS BE DENIED

(ECF No. 2)

FOURTEEN (14) DAY DEADLINE

Plaintiff Brandon Alexander Favor ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on September 15, 2019, together with a motion for leave to proceed *in forma pauperis*. (ECF Nos. 1, 2.) Plaintiff has not yet submitted a certified copy of his prison trust account statement.

Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that "[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious

1 physical injury.”¹ Plaintiff has been informed in prior cases that he is subject to 28 U.S.C.
2 § 1915(g).²

3 The Court has reviewed Plaintiff’s complaint and finds that his allegations do not satisfy
4 the imminent danger exception to section 1915(g).³ *Andrews v. Cervantes*, 493 F.3d 1047,
5 1053–55 (9th Cir. 2007). Though difficult to read, Plaintiff appears to allege that another inmate,
6 Defendant Christian Jude Buckle, who suffers from mental health conditions and substance
7 addictions, has threatened Plaintiff’s safety by displaying sexual behaviors and has committed
8 property damage, privacy violations, confidentiality violations, and other unspecified physical
9 harms. Plaintiff does not appear to allege that any of the other named defendants, who may or
10 may not be employees of CDCR, have taken any actions that have or will harm Plaintiff. (ECF
11 No. 1.) As such, Plaintiff has not alleged any imminent danger of serious physical injury at the
12 time the complaint was filed and has not satisfied the exception from the three strikes bar under
13 28 U.S.C. § 1915(g). Plaintiff must pay the \$402.00 filing fee if he wishes to litigate this action.

14 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
15 District Judge to this action.

16 Further, it is HEREBY RECOMMENDED that:

- 17 1. The motion to proceed *in forma pauperis*, (ECF No. 2), be DENIED, pursuant to 28
18 U.S.C. § 1915(g); and
- 19 2. Plaintiff be ORDERED to pay the \$402.00 initial filing fee in full to proceed with this
20 action.

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23 ¹ The Court takes judicial notice of the following United States District Court cases: (1) *Favor-El v. Rome*, Case No.
24 1:15-cv-01865-LJO-EPG (E.D. Cal.) (dismissed on November 22, 2016 for failure to state a claim); (2) *Favor v.*
25 *State of California*, Case No. 2:16-cv-02870-JGB-JEM (C.D. Cal.) (dismissed on May 2, 2016 as frivolous,
malicious, and for failure to state a claim); and (3) *Favor-El v. United States of America*, Case No. 2:15-cv-01448-
GEB-AC (E.D. Cal.) (dismissed on October 22, 2015 as frivolous).

26 ² See, e.g., *Favor v. Monae*, Case No. 1:19-cv-00081-LJO-SKO (E.D. Cal.). It is also noteworthy that Plaintiff has
27 been deemed a vexatious litigant, has filed fifty (50) actions in this district alone, and has filed numerous other
actions in the other district courts in this state. Plaintiff has also filed actions under the surnames “Favor” and
“Favor-El.”

28 ³ The Court expresses no opinion on the merits of Plaintiff’s claims.

1 These Findings and Recommendations will be submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
3 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
4 file written objections with the court. The document should be captioned “Objections to
5 Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that the failure to file
6 objections within the specified time may result in the waiver of the “right to challenge the
7 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)
8 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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10 IT IS SO ORDERED.

11 Dated: September 16, 2021

12 /s/ Barbara A. McAuliffe
13 UNITED STATES MAGISTRATE JUDGE
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